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| 10/588,321      | 08/03/2006  | Alain Joseph Jean Garnier | PRD2188USPCT        | 7212             |

27777 7590 05/01/2009  
PHILIP S. JOHNSON  
JOHNSON & JOHNSON  
ONE JOHNSON & JOHNSON PLAZA  
NEW BRUNSWICK, NJ 08933-7003

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| EXAMINER |
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SULLIVAN, DANIELLE D

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| ART UNIT | PAPER NUMBER |
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1616

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05/01/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/588,321 | <b>Applicant(s)</b><br>GARNIER, ALAIN JOSEPH JEAN |  |
|                              | <b>Examiner</b><br>DANIELLE SULLIVAN | <b>Art Unit</b><br>1616                           |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 3-8, 11 and 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 9, 10, 13 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/03/2006</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of Group I in the reply filed on 1/09/2009 is acknowledged. The traversal is on the ground(s) that searching Groups I-VIII would not constitute undue burden. Applicant's arguments with respect to Groups I-VIII are not found persuasive because compounds II-a through II-j constitute different classes of compounds. Furthermore, the invention lacks a special technical feature since all compounds contain a known compound DDAC. The requirement is still deemed proper and is therefore made FINAL.

Claims 3-8, 11 and 12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Groups II-VIII, there being no allowable generic or linking claim. Claims 1, 2, 9, 10, 13 and 14 are pending examination. Applicant timely traversed the restriction (election) requirement in the reply filed on 1/09/2009.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 13 recites the limitation "a synergistic composition as claimed in claim 1" in reference to the composition of claim 1. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson et al. (US 6,207,695).

**Applicant's Invention**

Applicant claims a composition comprising DDAC (didecyl dimethyl ammonium chloride) and imazalil. Applicant claims a process of preparing a the composition by mixing the ingredients with a carrier.

**Determination of the scope and the content of the prior art**

**(MPEP 2141.01)**

Nelson et al. teach compositions comprising imazalil (column 2, lines 30-67). The compound is applied at rates from 0.0001-10 g/kL(equivalent to mg/L) (column 4, lines 52-57). The composition may be formulated to comprise the active ingredient and a carrier as a dustable powders, granules, emulsifiable concentrates, emulsions, or aqueous suspensions (column 4, line 58 through column 5, line 44). The composition can contain other compounds having biological activity, such as fungicidal activity and when added to imazalil the compositions can have broader spectrum of activity or a greater level of intrinsic activity than the use of imazalil alone (column 6, lines 54-65).

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DDAC (didecyl dimethyl ammonium chloride) is listed as a possible compound that imazalil may be combined with (column 7, lines 23 and 24).

**Ascertainment of the difference between the prior art and the claims**

**(MPEP 2141.02)**

Nelson et al. do not envisage a particular composition comprising imazalil and DDAC. However, the combination of imazalil with other compounds selected from DDAC is taught to give a broader spectrum of activity or a greater level of intrinsic activity than when imazalil is used alone.

**Finding of prima facie obviousness**

**Rationale and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Nelson et al. to utilize a composition comprising imazalil and DDAC. One would have been motivated to combine imazalil and DDAC because Nelson et al. teach that the combination of imazalil with other compounds selected from DDAC give a broader spectrum of activity or a greater level of intrinsic activity than when imazalil is used alone.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson et al. (US 6,207,695) in view of Hall et al. (US 5,547,990).

### **Applicant's Invention**

Applicant claims a composition comprising DDAC (didecyl dimethyl ammonium chloride) and imazalil. Claim 9 specifies the ratio of DDAC to imazalil is from 1:100 to 10:1. Claim 10 amounts of DDAC and imazalil range from 10 to 1 mg/l (ppm).

### **Determination of the scope and the content of the prior art**

#### **(MPEP 2141.01)**

The teachings of Nelson et al. are addressed in above 103 rejection.

### **Ascertainment of the difference between the prior art and the claims**

#### **(MPEP 2141.02)**

Nelson et al. do not teach a ratio of DDAC to imazalil. While, Nelson et al. does teach that imazalil can be 10 ppm the range of DDAC is not disclosed. It is for this reason that Hall et al. is joined

Hall et al. teach combinations of imidazoline (a conazole) based amphoteric and quaternary ammonium compounds which show reduced irritation profiles while having excellent cleaning detergency (abstract). Hall et al. teach didecyl dimethyl ammonium chloride as DIDAC is the preferred and shows synergistic irritation reduction. The ratio of quaternary ammonium to amphoteric surfactants has useful ranges from 11:1-0.1:1 and concentrations of 10-10,000ppm (Table 1, column 4, lines 56-61).

### **Finding of prima facie obviousness**

#### **Rationale and Motivation (MPEP 2142-2143)**

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It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Nelson et al. and Hall et al. to utilize a ratio of imazalil to DDAC of 1:10 to 1:0.1. One would have been motivated to use this a ratio with this range because Hall et al. teach that the ratio of conazole surfactants to DDAC range from 1:10 to 1:0.1. Since imazalil is a conazole one would have been motivated to adjust to this range via routine optimization because Hall et al. teach that this range a useful range in achieving reduced irritation while having excellent cleaning capability.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Nelson et al. and Hall et al. to utilize amounts of DDAC and imazalil at 10 (ppm). One would have been motivated to use this a ratio with this concentration because Hall et al. teach that the concentration of DDAC can be 10 ppm and Nelson et al. teach that concentration of imazalil can be 10 ppm.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Sullivan whose telephone number is (571) 270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Danielle Sullivan  
Patent Examiner  
Art Unit 1616

/Mina Haghighatian/  
Primary Examiner, Art Unit 1616